



HOUSE ARMED SERVICES COMMITTEE DUNCAN HUNTER – CHAIRMAN

PRESS RELEASE

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House Armed Services Committee Hearing Focuses on Possible Legislative Initiatives to Try Detainees for War Crimes Witnesses Stress Need for Balanced Approach that Preserves National Security

Washington, D.C. — Witnesses testifying today about the recent U.S. Supreme Court decision reached in *Hamdan v. Rumsfeld* largely agreed that a legislative framework should be constructed that both protects national security and American service members.

Today's hearing was convened in the wake of the Supreme Court's June 29, 2006, ruling that military commissions established by the President lack the power to proceed because they do not comply with the Uniform Code of Military Justice (UCMJ) and Common Article 3 of the Geneva Conventions.

Chairman Hunter (R-CA), who chaired the hearing, emphasized that the decision reached by the Supreme Court directly impacts how our nation fights wars. In his opening remarks, Chairman Hunter cited Justice Thomas' dissenting views on the recent Supreme Court decision.

"He said we are 'not engaged in a traditional battle with a nation-state, but with a world-wide, hydra-headed enemy, who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of beheadings of civilian workers and has tortured and dismembered captured American soldiers,'" said Hunter.

Dispelling misconceptions that the recent court decision was against the Administration's detention of individuals at Guantanamo, Acting Assistant Attorney General Steven G. Bradbury clarified the implications of the decision; "It is important to point out that the Court did not call into question the authority of the United States to detain enemy combatants in the War on Terror, and that the Court's decision does not require us to close the detention facilities at Guantanamo Bay or release any terrorist held by the United States."

Bradbury highlighted the key issue raised in the decision, namely, that Congress must legislate the appropriate procedures governing military commissions. "We think Congress needs to do something to bring certainty and clarity to folks on the front lines who are handling detainees," Bradbury said.

Directly referencing the legality of military tribunals for non-combatants, such as those now detained at Guantanamo, Bradbury said that a certain flexibility must be retained to make military commissions

work. He highlighted portions of the UCMJ, which pertains to U.S. military service members that could be altered as a template to try detainees.

For example, witnesses cited the need to review the right to counsel, Article 32 – given to U.S. military members when they are first suspected of a criminal act (the military equivalent of a Grand Jury trial), and the recitation of Miranda rights — all of which would be counterproductive when trying to obtain intelligence information from illegal enemy combatants. Other alterations might involve rules regarding hearsay evidence and controlling detainee access to classified material.

Defense Department Deputy General Counsel Daniel Dell’Orto stressed the fact that the war on terror continues as prosecutions of certain detainees go forward. “We can’t allow [the enemy] to use our due process, our legal system as one of his other weapons as he carries on this fight,” Dell’Orto told members of the House Armed Services Committee.

“I don’t want a soldier when he kicks down a door in a hut in Afghanistan searching for Osama bin Laden to have to worry about whether when he does so and questions the individuals he finds inside, who may or may not be bin Laden’s bodyguards or even that individual himself, to worry about whether he’s got to advise him of some rights before he takes a statement. I don’t want him to have to worry about filling out some form that is going to support the chain of custody when he picks up a lap top computer that has the contact information for all manner of cells around the world while he is still looking over his shoulder to see whether there’s not an enemy coming in after him,” stated Dell’Orto

Dell’Orto testified that current military commission procedures have already implemented many of the provisions that mirror our own system of justice, including the presumption of innocence at the outset of the trial, the standard burden of proof on the prosecution, the provision of counsel and the finding of guilt beyond a reasonable doubt. He urged the current process to be considered a starting point in satisfying the concerns raised in the Supreme Court decision.

Dell’Orto re-emphasized the difficulties in prosecuting and warfighting at the same time. “You cannot conduct this fight without doing interrogations of these folks, because you can’t separate the non-factors from the factors in this war. You’ve got to be able to talk to all of them. And you’ve got to do it, as Mr. Bradbury says, right now. Because that real gem of intelligence that guy may have, about a cell phone number, about a safe house location, may lead you to a very, very significant find or a very, very significant target. And so we have from the earliest days said our goal is to get intelligence from these folks. If we can prosecute them down the road and they have committed sufficiently serious acts to warrant prosecution we will do that. But we’re going to have to do everything we can to preserve our opportunity to grab intelligence from them because this is a different type of war and the intelligence gathering is absolutely critical.”

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